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10/618,870	07/14/2003	Francis Thomas Brija	4219-031010	6947

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EXAMINER

ELOSHWAY, NIKI MARINA

ART UNIT PAPER NUMBER

3727

DATE MAILED: 12/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/618,870

Applicant(s)

BRIJA, FRANCIS THOMAS

Examiner

Niki M. Eloshway

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4, 5 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims are considered vague and indefinite because it is unclear if applicant is claiming the subcombination of the hinged cover or the combination of the hinged cover and cooking utensil. The preamble of the claims, and independent claim 1, are drawn to the subcombination of the hinged cover, however claims 4, 5 and 7 include limitation to the cooking utensil. Is the cooking utensil part of the claimed invention?

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Hayashi (U.S. 5,193,441). Hayashi teaches a hinged cover 10 comprising a cover body at lead line 10 in figure 1 and a hinged section at lead line 39 in figure 1. The element shown in figure 1, adjacent the hinge 39, is considered to be the handle.

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5. Claims 1-4 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Fleischer (U.S. 1,485,602). Fleischer teaches a hinged cover 6 comprising a cover body at lead line 6 in figure 2 and a hinged section at 8. The handle of the hinged section is element 10.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fleischer (U.S. 1,485,602) in view of Jarvis (U.S. 6,273,288). Fleischer discloses the claimed invention except for the notched cutout. Jarvis teaches that it is known to provide a hinged cover with a notched cutout (see element 120 in figure 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the hinged cover of Fleischer with the hinged section having a notched cutout, as taught by Jarvis, so a utensil can extend therethrough and be retained therein.

8. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fleischer (U.S. 1,485,602) in view of Jarvis (U.S. 6,273,288). Fleischer discloses the claimed invention except for inverted U of the perimeter. Jarvis teaches that it is known to provide a hinged cover with a perimeter having an inverted U shape (see element 36 in figure 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the hinged cover of Fleischer with the perimeter having an inverted U shape, as taught by Jarvis, securely receive the rim and prevent movement of the cover with respect to the container.

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Regarding claim 7, Fleischer also does not teach the notched cutout. Jarvis teaches that it is known to provide a hinged cover with a notched cutout (see element 120 in figure 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified hinged cover of Fleischer with the hinged section having a notched cutout, as taught by Jarvis, so a utensil can extend therethrough and be retained therein.

9. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fleischer (U.S. 1,485,602) in view of Mestnik (U.S. 5,994,672). Fleischer discloses the claimed invention except for the cover being made of 300 series stainless steel. Mestnik teaches that it is known to construct a cooking utensil from 300 series stainless steel (see col. 5 lines 59-62). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the hinged cover of Fleischer being made of 300 series stainless steel, as taught by Mestnik, in order to give it the strength and corrosion resistance characteristic of this material.

### *Conclusion*

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art is cited for the hinged section.

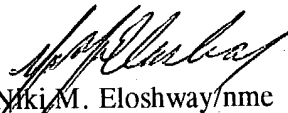
11. THIS ACTION IS NON-FINAL.

12. In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a USPTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX will be promptly forwarded to the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is (571) 272-4538. The examiner is in

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the office on Thursdays and Fridays. Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Receptionist at (703) 308-1148.



Niki M. Elishway/nme  
Patent Examiner  
December 2, 2004